



**BELOW MARKET RATE
HOUSING PROGRAM
ADMINISTRATIVE PROCEDURES
FOR DEVELOPERS**



The Below Market Rate Housing Program Administrative Procedures was prepared as a joint effort by the:

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Acknowledgements

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City of Sunnyvale
Below Market Rate Housing Program
Administrative Procedures–Chapter I. Developer

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City of Sunnyvale Below Market Rate Housing

Program Administrative Procedures

Chapter I. Developer Requirements

Requirements for Developers of Rental and Ownership Units

This Section of the Administrative Procedures of the City of Sunnyvale's Below Market Rate (BMR) Housing Program contains the procedures related to Developers of BMR Rental and Home Ownership units. These Procedures may be amended and updated from time to time.

Please refer to the City's website at

<http://sunnyvale.ca.gov/Departments/Community+Development/Housing+Division/Affordable+Housing/> to determine the most current version of these Procedures.

A. Basic Requirements – BMR Units and Fee

1. Which Developments are Required to Participate in the BMR Program

There is no BMR requirement for developments of less than nine parcels or units. Section 19.66.020 of the Sunnyvale Municipal Code states the requirements for the number of units in residential developments to be dedicated to the Below Market Rate Program. All residential developments consisting of nine or more units designed and intended for permanent occupancy, located in any zoning district other than R-0, R-1, R-1.5 or R-1.7/PD shall maintain a percentage of the total number of dwelling units or parcels within the development as BMR units. Any tentative map, use permit or special development permit approving residential construction projects shall describe the total BMR units required in the project to meet the BMR percentage criteria.

2. How to Calculate the Number of Units Required

According to the terms of the Sunnyvale Municipal Code:

Ownership projects, including condominium conversions: 12.5% of units (excluding any density bonus units)

Rental projects: at present 10% of the total number of dwelling units and 15% after certain market conditions occur.* (excluding any density bonus units)

The conditions of approval will specify the number and bedroom composition of BMR units together with other compliance requirements contained in Chapter 19.66 and these Administrative Procedures.



*Economic trigger for increase of rental units: In the event that the Sunnyvale vacancy and rent survey documents that apartment vacancy rates reach levels below 3% and rents show a net increase of 20% or more during a 24-month period, then all new rental developments shall maintain 15% of the total number of dwelling units as BMR.

Fractions of BMR units: In calculating the number of units required based on the applicable percentage, any fraction of a dwelling unit or parcel less than five-tenths shall be disregarded and any fraction greater than or equal to five-tenths shall be construed as one dwelling unit.

Density Bonus Units: Section 19.66.090, 19.66.100, and 19.66.110 describe the circumstances under which the City may permit an increase in the number of housing units in a proposed residential development and how the number of BMR units provided is affected.

3. How to Determine In-Lieu Fee (Developments under 20 units)

For developments of between nine and nineteen parcels or units, the Director of Community Development, upon request by the developer, may waive the requirements to provide BMR units in exchange for the payment of a BMR in-lieu fee as described in Section 19.66.090. The Housing Officer will calculate the fee. The developer shall file the request for the in-lieu fee at the time a development permit application is filed.

The BMR in-lieu fee for individually owned units shall equal the difference between the fair market value of the BMR unit as determined by impartial appraisal and the BMR unit price established under 19.66.040.

The BMR in-lieu fee for rental units shall be the difference between the market rent for the units (determined by actual rental units) and the established BMR rent capitalized over fifty-five years. The Consumer Price Index shall be used to establish the inflation rate, and median rental rates from the Sunnyvale Vacancy and Rent Survey shall be used to calculate the estimated increase in rental rates.

4. Size of Units, distribution and Quality of Construction

All BMR units in a project or phase of a project shall be constructed concurrently with non-BMR units, shall be dispersed throughout the project, reflect the square footage of the units in the project, and shall not be distinguished by interior or exterior design, amenities, construction or materials. BMR units are the same size as market rate units. The equal distribution of BMR units throughout the property shall reflect the variety of relative advantages and disadvantages of locations on the site.

Section 19.66.020(c) also provides that the type of BMR units (number of bedrooms) for both ownership and rental projects must reflect the proportion of unit sizes in the total project. For example, if there are 20 percent one-bedroom units, 30 percent two-bedroom units and 50 percent three-bedroom units in the market rate portion of the project, then the same distribution shall apply to the below market rate units of the project. Each developer shall provide, when submitted the building permit, a site map containing locations, sizes, and compositions of units, and site amenities of project for review by the Housing Officer in order to establish the specific units to be committed as BMR units.



5. Determination of Initial Rents

The rental/sales price of the BMR unit(s) is established at the time of the execution of the Development Agreement.

Calculation of Initial Rental Rates

Base rents for the BMR units will be established at the time of initial occupancy of newly constructed units. Section 19.66.040(c) states that rental prices of BMR units shall be established at levels affordable to households at 70% or less of area median income. However, base rents are calculated utilizing the following two methods and the *lower rent calculated is the initial base rent*:

- a) Initial Rents are calculated based on HUD Area Median Income (AMI) for San Jose Metropolitan Statistical Area as follows: The U.S. Department of Housing and Urban Development (HUD) publishes annual Area Media Income (AMI) data for 1-8 person households. Monthly rents are equal to 30% of 65% of AMI divided by twelve based upon number of bedrooms i.e.1 bedroom equals two-person household income, 2 bedroom equals three person household income. As an example, if AMI is at \$95,000 for a three person household, the maximum monthly rent for a two bedroom unit would be:

$$\$95,000 \times 65\% = \$61,750 \times 30\% = \$18,525 \text{ (total yearly rent)}$$

$$\$18,525 \text{ divided by } 12 \text{ months} = \$1,543 \text{ per month}$$

- b) Initial Rents are calculated utilizing the City of Sunnyvale Rent and Vacant Survey Report published in July (January through June) and January (July through December). The semi-annual report surveys approximately 100 complexes containing approximately 15,000 rental units. The report contains current market median rents per unit size (number of bedrooms). Initial rents for the BMR units are 80% of the median rents as contained in the most recent Rent and Vacancy Survey Report. As an example, if the current report states that median rent for a two bedroom rental is \$1,335, then the base rent is:

$$\$1,335 \times 80\% = \$1,068$$

Changes/Adjustments in Rents

As stated in Section 19.66040(d), the annual change in the maximum BMR rental prices to be charged by applicants or project owners not participating in federal "Section 8" or similar programs shall be either a maximum increase of five percent or the increased percentage of median annual rent based on the Sunnyvale Vacancy and Rent Survey, whichever is less.

Results of the vacancy and rent survey for January-June are released in July and results from July through December are released in January. Rents are recalculated from January of the prior year to determine the percentage increase. Owners will be notified in March of each year of allowable increases in rents.



6. Determination of Initial Sales Prices

The price of the units will be established in the Development Agreement. As stated in Section 19.66.030(c), sales prices according to the number of bedrooms shall be established by the City or its designee and revised annually at levels affordable to households at 80% of area median income with consideration for construction costs. The current sales price ranges approved by the City Council are included in Attachment D-7 and posted on the City website of BMR Program information. Prices are adjusted annually based upon increases/decreases to the AMI.

B. Description of the Steps in the Development and Permit Process

After reading Chapter 19.66 and the BMR Program Administrative Procedures, prospective applicants are encouraged to meet with the Housing Officer early in the development process to ensure a clear understanding of BMR program requirements as they pertain to the development and answer any questions prior to submitting permit application.

The following are the steps in the development and permit process for projects with BMR units:

Step 1. Developer Consults with Housing Officer to Determine BMR Standard Conditions for Development Permit and Agreement

Prior to submitting an application, the property owner/developer is encouraged to consult with the Housing Officer concerning the current sales price/initial rent for the BMR units. The City will issue a “BMR Standard Permit Conditions” form [Attachment D-2] to attach to the development permit application. These conditions will be incorporated in an “Agreement for BMR Rental Housing Development” [Attachment D-3] or an “Agreement for BMR Ownership Housing Development” [Attachment D-4] between the City and the Developer which is signed and recorded prior to the City issuing the building permit. Sales and rents will be quoted but will be adjusted at the time the Agreement is executed.

Consultations with the Housing Division BMR staff and permit approval by the Housing Officer will be conducted expeditiously and are not intended to impede the usual timeframe for permit processing.

Step 2. Developer Submits Development Permit Application

Development permit applications (e.g. Use permits, Special Development Permits, or subdivision map) submitted to the City for approval of residential construction projects of nine or more dwelling units as described in Section 19.66.010 shall contain the attachment, “BMR Standard Permit Conditions form” from Step 1 in order to ensure the following is specified in the development permit application:



- the number of BMR units (include in Planning Division form, “Residential Project Data Sheet”)
- the pricing/rents of the BMR units
- the bedroom composition of BMR units

In order for a development permit application to be complete, the developer must submit the “BMR Standard Permits Condition.”

Step 3. Prior to Building Permit is issued, Development Agreement is signed and recorded

On or before a building permit is issued by the City, the Developer shall provide the City the signed and notarized BMR Agreement for recordation on the property. The Agreement is a condition of approval in the development permit. The “Standard Permit Conditions” as agreed by the Developer and Housing Officer in Step 1 are incorporated into an “Agreement for BMR Rental Housing Development” [Attachment D-3] or an “Agreement for BMR Ownership Housing Development” [Attachment D-4] signed by the Developer and the City and recorded, prior to the City issuing the building permit. The Developer and the City agree on the location of specific BMR units, as identified in the map recorded with the Agreement.

Step 4. 60 Days Prior to Occupancy Permit–Notify City of Estimated Completion Date

No later than 60 days prior to the request for an Occupancy Permit, the developer shall notify the Housing Officer of the BMR Estimated Completion Date. This enables the City to notify eligible purchasers and renters of the forthcoming availability of the units.

Step 5. Prior to Final Approval for Occupancy–Recordation of Deeds of Trust

Final approvals or Certificate of Occupancy for any portion of the development shall not be issued until the City has recorded the controls contained in the Deed of Trust on the property.

Rental Projects

After the City has been notified of the BMR Estimated Completion Date” and signed the Agreement with the approved BMR initial prices/rents, it will transmit to the developer the appropriate resale controls in a Deed of Trust, such as Attachment D-5. The Deed of Trust and a preliminary title report shall be submitted to the Housing Officer for execution, approval of the City Attorney and recordation with the county recorder of Santa Clara County. The resale controls will be recorded on the property and will bind all successors in interest for a 55-year period.



Owner Units

After the developer notifies the City of units becoming available for sale, the City will notify the BMR eligible households on the BMR Owner waiting list. The seller/developer will sell the unit to the eligible household in the same manner that they would transact any other type of sale. However, the Developer and the Buyer shall execute the Addendum to Purchase Offer (Attachment D-8, O-4) and shall provide an executed copy to the City. Prior to the close of escrow, the buyer of each unit shall execute a Deed of Trust to secure resale and occupancy restrictions for a 30-year period and shall provide other documentation as required by the City.

Step 6. Occupancy by BMR-eligible Households

All BMR units shall be sold or rented only to low, very low and moderate-income households. The developer/property owner is responsible for enforcing this program requirement.

Rental Units

Rental units shall be rented to households at or below 70% of Area Median Income. The Property Owner, Managing Partner or designee e.g. Managing Agent shall be responsible for ongoing certifications of the households occupying BMR units. Detailed procedures are provided in the Rental section of these BMR Administrative Procedures.

Ownership Units

Households of 70% to 120% of Area Median Income shall be eligible for the ownership program. The City will supply eligible purchasers to the Developer/Property Owner. As described in the Ownership section of these BMR Administrative Procedures, the City shall accept applications from prospective purchasers, shall determine the qualifications of such persons and shall compile and maintain a list of qualified purchasers. Sales prices are based on affordability to 80% of median income.

C. Rental Projects – Terms and Conditions

Control Period

Controls and restrictions on rental units shall apply for a period of fifty-five years from the date of recordation as stated in Section 19.66.020(g).

Record Covenants

As stated in Section 19.66.020(e), the property owner is responsible for identification and designation of BMR units and appropriate resale controls. The City shall record a deed of trust imposing program restrictions with the County Recorder of Santa Clara County prior to any occupancy of any residential unit within a development containing BMR units.



Owner/Manager Certifications

Both property owner(s), managing partner(s), *and* property manager(s) (if different) will certify Receipt of these Administrative Procedures with statement of intent to manage the BMR units according to these Procedures. The Certification Form is attached as Form R-9.

Continuing Education of Management Agent

Semi-annually, the City will provide workshops to provide technical assistance to the management agent(s) of properties containing BMR units. The owner(s) and manager(s) of properties developed after January 1, 2004 are required to attend a BMR Rental Management workshop prior to the initial leasing of units at the property and every two years, thereafter. Managers of properties developed prior to January 1, 2004 are strongly encouraged to attend the educational programs.

Maintenance of Waiting List of Eligible Occupants

Each rental development containing BMR units will maintain a waiting list of eligible occupants, arranged in point order according to the Resident Selection Plan in Attachment R-1. Property managers will continue to accept applications on the waiting list until the number of applicants reaches four times the total number of BMR units in the development. When that number is reached, the waiting list may be closed until January 1 of the following year.

Reporting Requirements on BMR Unit Occupants and Waiting List

Owner(s) or Property managers will submit reports on the occupants of BMR units and the waiting list for BMR units, using Forms R-7 and R-8, within 30 days of request by the City but no less than quarterly.

City Audits

The City will conduct periodic audits to verify compliance with BMR Program Administrative Procedures. As stated in Section 19.66.040(a), the City shall have access to the seller's records and books pertaining to any unit covered by this chapter. Property managers and owners will make records available to City auditors as requested, with reasonable advance notice.

Penalties

The City may impose penalties should an audit result in findings that the management of the BMR units is not in compliance with any of the provisions of Chapter 19.66 or any of these Administrative Procedures.



D. Ownership Projects–Terms and Conditions

Recorded Covenants on Terms of Restriction

Controls and restrictions shall apply for a period of thirty years from the date of recordation as stated in Section 19.66.020(f). As stated in Section 19.66.020(e), the property owner is responsible for identification and designation of BMR units and appropriate resale controls that shall be recorded as a deed of trust imposing program restrictions with the county recorder of Santa Clara County. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development containing BMR units.

Process for Sales of Units

A detailed description of the sales process is contained in the Ownership Section of these Administrative Procedures. The City will maintain a list of eligible purchasers. The Developer/Property Owner will notify the City 60 days prior to a BMR owner unit becoming available and/or available to be shown, so that the City will be provided adequate time to notify eligible purchasers.



BELOW MARKET RATE PROGRAM DEFINITIONS

Area Median Income: Income eligibility limits are established by the U.S. Department of Housing and Urban Development (HUD). “Area” means metropolitan area or non-metropolitan county

Family: (1) Two or more persons related by birth, marriage, or adoption [Source: U.S. Bureau of the Census]. (2) An individual or a group of persons living together who constitute a *bona fide* single-family housekeeping unit in a dwelling unit, not including a fraternity, sorority, club, or other group of persons occupying a hotel, lodging house or institution of any kind [Source: California] Department of Housing and Community Development.

Household: All those persons – related or unrelated – who occupy a single housing unit. (See “Family.”)

Low Income Household: A household with an annual income no greater than 80 percent of the area median income for the number of people in the household and based on the latest available eligibility limits established annually by the U.S. Department of Housing and Urban Development (HUD).

Moderate Income Household: A household with an annual income between the lower income eligibility limits of 80 percent of the area median family income and 120 percent of the area median family income, as established by the U.S. Department of Housing and Urban Development (HUD).

Very Low Income Household: A household with an annual income no greater than 50 percent of the area median family income, based on the latest available eligibility limits established by the U.S. Department of Housing and Urban Development (HUD),



City of Sunnyvale

Below Market Rate Housing Program

BMR STANDARD PERMIT CONDITIONS

Notice to Applicant

If approved, your project will be subject to certain conditions affecting the Below Market Rate units in your project. The purpose of this document is to inform you of the standard BMR conditions at the time of application. Depending upon the nature and location of your project, these conditions will become a part of your Use Permit, Special Development Permit, or Tentative Map and building permit. The Conditions will be incorporated into an Agreement to be entered into after approval of your project and prior to issuance of a building permit.

A. Conditions applying both to ownership and rental projects

1. Developer shall build _____ studio BMR units
_____ one-bedroom BMR units
_____ two-bedroom BMR units
_____ three-bedroom BMR units

Of the foregoing units, _____ will be rental or _____ will be ownership units which shall be permanently designated as such and maintained in compliance with the terms of this permit.

2. Sixty (60) days prior to the estimated occupancy date, Developer shall provide notice of BMR estimated completion date to the Housing Officer.



3. Prior to the issuance of an occupancy permit for any part or phase of the development, Developer/or/Owner shall execute a Deed of Trust in a form approved by the City Attorney, which shall affect title to the designated BMR units. The City will record the Deed of Trust containing the deed restrictions. Such restrictions shall be designed and intended to bind successors in interest. For rental developments, the controls will run with the land for the period of 55 years from the date of recordation thereof; for ownership developments, the controls will run for 30 years.

The recordation of the Deed of Trust shall be a condition precedent to issuance of a permit to occupy the development.

B. Conditions applying to all Ownership units:

4. The initial sales price of Ownership BMR units shall not exceed:

Studio unit(s) _____

1 bedroom unit(s) _____

2 bedroom unit(s) _____

3 bedroom unit(s) _____

4 bedroom unit(s) _____

5. Developer shall offer said BMR units for sale only to persons qualified under the terms of Sunnyvale Municipal Code Chapter 19.66, as amended. Offers shall be in writing and shall be held open for no less than 90 days.
6. Following acceptance of an offer of sale, Developer shall execute all necessary sales documents, and shall use its best efforts to complete each sale transaction.

A Deed of Trust shall be recorded on each unit, which shall affect resale and occupancy of the designated BMR unit. The restrictions OF the Deed of Trust shall bind the purchaser for the period of 30 years from the date of recordation. Should the property be transferred prior to the expiration of the thirty year period, future transferees will be required to enter into a new Deed of Trust and an additional thirty year term, or as may be amended from time to time by revisions to Chapter 19.66.



C. Conditions applying to all rental units:

7. BMR Rental units shall be held and maintained by Developer and its successors in interest as BMR rental units. They shall be made available to and occupied only by persons qualified therefore under the provisions of Sunnyvale Municipal Code Chapter 19.66, as amended.
8. Developer shall permit reasonable access to the development to City or its designee for purpose of monitoring and verifying continuous compliance with Sunnyvale Municipal Code Chapter 19.66, as amended.
9. The initial base rental prices of such units shall not exceed:

Studio unit(s) _____

1 bedroom unit(s) _____

2 bedroom unit(s) _____

3 bedroom unit(s) _____

4 bedroom unit(s) _____

10. In the event that any BMR unit or portion thereof is destroyed by fire or other cause, all insurance proceeds therefrom shall be used to rebuild such units.
11. Any material breach of these BMR conditions shall constitute grounds for the revocation of this permit, in addition to other remedies provided by law.



**City of Sunnyvale
Below Market Rate
Rental Housing Agreement**

Date:

Site: _____, Sunnyvale, California

Unit No. and composition of BMR Units:

Three Bedroom Units - _____ Units

Two Bedroom Units - _____ Units

One Bedroom Units - _____ Units

1. BMR rental units shall be held and maintained by developer and its successors in interest as BMR rental units for a period of fifty-five years from the date of occupancy and recordation of the Deed of Trust securing BMR restrictions. Developer and its successors shall comply with the provisions of Sunnyvale Municipal Code Chapter 19.66 as amended and the administrative procedures for the operation of Below Market Rate rental units.



2. All BMR units in the project or phase of the project shall be constructed concurrently with non-BMR units, shall be dispersed throughout such project, reflect the range of numbers of bedrooms provided in the project as a whole, reflect the square footage of the units in the project, and shall not be distinguished by exterior or interior design, construction, or materials.
3. The following described rental units are hereby designated as Below Market Rate (BMR) rental units and shall be subject to the terms and conditions of the Below Market Rate Program.

Initial BMR rental units:

- a. The following units are one/two/three bedroom BMR units: [specify addresses]
 - b. A site map identifying the location of the BMR units is attached. City staff will review and determine acceptance of the location of the BMR units.
4. The City of Sunnyvale may specifically enforce the terms and conditions of the BMR program, by any means or process permitted by law. Eligibility criteria applicable to prospective tenants and all information pertaining to the administration and enforcement of Chapter 19.66 of the Sunnyvale Municipal Code provisions may be obtained from the Department of Community Development - Housing Division, City Hall, 456 West Olive Avenue, P.O. Box 3703, Sunnyvale, CA 94088-3707.
 5. This Agreement contemplates that from time to time, the Developer or its successor may designate different units as BMR rentals rather than the units described in Item 3. The changes may be made provided the following conditions are satisfied:
 - a. The total number of BMR units shall not be less than the ___#___-initial BMR rental ___#___ bedroom units set forth in this Agreement.
 - b. All designated BMR units shall be dispersed through-out the project so that the distribution of designated units is substantially the same as set forth in Item 3 with at least ___#___ _#_ bedroom BMR units.
 - c. Developer or its successor shall send written notification to the Director of Community Development of the City of Sunnyvale of any changes in the designation of BMR units within thirty (30) days of such change.



6. All of the designated BMR units shall be maintained in accordance with all applicable provisions of Sunnyvale Municipal Code Chapter 19.66 and the administrative procedures for the Below Market Rate Rental Program.
7. None of the terms set forth herein is intended or shall be construed to prohibit or regulate the encumbrance of title to any part of the real property which is the subject of this Agreement. In the event of foreclosure or transfer of deed in lieu thereof, title to such property shall be taken subject to these restrictions.
8. Developer or its successor shall endorse a Deed of Trust to secure the BMR restrictions and to be recorded on the property prior to issuance of a Certificate of Occupancy by the City of Sunnyvale Building Division. Base rents are calculated utilizing the following methods and the lower rent calculated is the initial base rent :

- a) Initial Rents are calculated based on HUD Area Median Income for San Jose Metropolitan Statistical Area as follows: HUD publishes annual Area Median Income (AMI) data for 1-8-person households. Monthly rents would be equal to 30% of 65% of AMI divided by twelve based upon number of bedrooms; i.e., 1 Bedroom equals two-person household income, 2 Bedroom equals three person household income. Therefore, if AMI is at 95,000 for a three person household, the maximum monthly rent for a two bedroom unit would be:

$$95,000 \times .65 = 61,750 \times .30 = 18,525 \text{ divided by } 12 \text{ (months)} = \$1,543.75$$

- b) Initial Rents are calculated utilizing the City of Sunnyvale Rent and Vacancy Survey Report published in July (January through June) and January (July through December). The semi-annual survey conducted by Realfacts, Inc. surveys approximately 100 complexes containing approximately 15,000 rental units. The report contains current market median rents per number of bedrooms. The initial rents for the BMR units are set at 80 % of median rents as contained in the most recent Rent and Vacancy Survey Report. Therefore if the current report contains information that median rent for a two bedroom rental is \$1,335, then the base rent would be:

$$1,335 \times .80 = 1,068$$

Based on the calculations in (a) and (b) above, the initial rents are set as follows:

| <u>1 Bedroom</u> | <u>2 Bedroom</u> | <u>3 Bedroom</u> |
|------------------|------------------|------------------|
| \$ | \$ | \$. |



Owner

Date

Housing Officer, City of Sunnyvale

Date

ACKNOWLEDGEMENT REQUIRED

STATE OF CALIFORNIA)

)ss.

COUNTY OF SANTA CLARA)

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me to be the person(s) (or proved to me on the basis of satisfactory evidence) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

per GC Sec. 40814; CC Sec. 1181

(Notary Seal)



RECORDING REQUESTED BY:

HOUSING DIVISION

City of Sunnyvale

456 West Olive Avenue

Sunnyvale, CA 94088-3707

PHONE: 408-730-7250

WHEN RECORDED MAIL TO:

City of Sunnyvale-Housing Division

456 West Olive Avenue

Sunnyvale, CA 94088-3707

Below Market Rate Ownership Housing Declaration

City of Sunnyvale

I, _____ ("Owner" herein), declare that its interest in the real property described as (or _____), located at _____, Sunnyvale, California, of which a site map is included as Attachment A, is and shall be subject to the terms of this agreement. This agreement when fully executed by the "Owner" and the City of Sunnyvale represents the agreement between the parties on the number, type, size, location and initial sale price for the Below Market Rate units contained in the _____ development.

1. That certain residential dwelling units described herein are hereby designated as a Below-Market Rate (BMR) unit, and shall be subject to the terms and conditions herein set forth. In the event that the parcel shall be subdivided, into condominium "airspace" units or otherwise, the terms and conditions hereof shall apply exclusively to said designated units, and not to any common area or other undesignated unit.



Ownership BMR Units:

| | | |
|--|----------|------|
| Plan __ (2 Bedroom / __ Bath) Total of Two Units | Building | Unit |
| | Building | Unit |
| Plan __ (3 Bedroom / __ Bath) Total of Two Units | Building | Unit |
| | Building | Unit |
| Plan __ (3 Bedroom / __ Bath) Total of Two Units | Building | Unit |
| | Building | Unit |

All BMR units in the project or phase of the project shall be constructed concurrently with non-BMR units, shall be dispersed throughout such project, reflect the range of number of bedrooms, provided in the project as a whole, reflect the square footage of the units in the project, and shall not be distinguished by exterior or interior design, construction, or materials.

2. In consideration of certain valuable land use and economic benefits conferred by the City of Sunnyvale upon the parcel, Owner, for itself, its successors, heirs, grantees and assigns, hereby obligates itself to construct and maintain the above described units as a Below Market Rate (BMR) residential dwelling unit as further defined in Chapter 19.66 of the Sunnyvale Municipal Code, in accordance with the provisions thereof and in accordance with the administrative guidelines pertaining to the implementation and management of the Below Market Rate Program as may be amended from time to time. Such units shall be purchased and shall be occupied only by persons or households, selected and approved by the City of Sunnyvale, in compliance with the provisions of Chapter 19.66 as amended, and any other terms and conditions set forth herein. Each purchaser shall be required to endorse and record a Deed of Trust to secure the BMR restrictions for a period of thirty years from the date of purchase, a sample of which is included in Attachment B.
3. The Below Market Rate Purchase Prices, effective and accepted as of the date of this agreement are as follows:

| | |
|---------------------|----------|
| Two Bedroom Units | \$ _____ |
| Three Bedroom Units | \$ _____ |

The estimated completion date for the designated units is _____.



4. The total price charged to any purchaser of the BMR unit above described shall be limited to the original purchase/sales price established by the City of Sunnyvale and set forth in this agreement, the Special Development Permit, Use Permit or Tentative Map applicable to the parcel.
5. At least 60 days prior to completion of a BMR unit, _____ will provide the Housing Officer with a written notice as to the unit available for purchase. Notice shall be addressed to: Housing Officer, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, CA. The Housing Division will then deliver a previously qualified purchaser to the Owner. The purchaser will be responsible for securing and qualifying for financing. The Owner is not required to finance any portion of the sales price. Owner shall provide the earliest dates that unit(s) may be shown to BMR applicants, information for sales contact.
6. Each BMR unit shall first be offered for sale, in writing, to the City of Sunnyvale or its designee. The City or its designee must accept the offer of sale within ninety (90) days of the offer. Once the offer has been accepted, an escrow shall be opened in a timely manner. The duration of escrow shall not exceed ninety (90) days in the event that the City's designee opens the escrow; Owner shall reserve the right to limit the duration of escrow to ninety (90) days.

Owner shall give notice to City of any intent to dissolve escrow at least 10 days prior to dissolution. City shall retain the right to purchase the unit for an additional period of fifteen (15) days commencing from the date of dissolution of escrow.

Nothing herein shall prevent the City from substituting one BMR qualified buyer for another, provided that the Owner shall not be bound by these restrictions for a period exceeding one hundred and ninety (190) days from the date the property is offered for sale.

If the city or its designee does not accept an offer of sale within one hundred and eighty days, all restrictions, resale controls, and other terms of Sunnyvale Municipal Code 19.66 shall cease and become null and of no further effect as to such unit.

7. The City of Sunnyvale or its designee may specifically enforce the terms and conditions contained herein, by any means or process permitted by law. Administrative guidelines pertaining to the computation of prices, eligibility criteria applicable to prospective purchasers and further information related to the administration and enforcement of the Sunnyvale Municipal Code provisions pursuant to which the terms of this agreement have been applied may be obtained from the Housing Division, Department of Community Development, P.O. 3707, Sunnyvale, California 94086-3707.



8. None of the terms set forth herein neither is intended nor shall be construed to prohibit, extend time periods, or otherwise regulate any foreclosure or transfer of title occasioned by the default of the Owner. Any notice of default shall constitute a notice of intent to sell by the Owner and the City reserves the right to cure any such default in order to preserve the unit in the BMR program.

In the event of foreclosure or transfer of deed in lieu thereof, title to such property shall be taken subject to these restrictions.

9. The terms and conditions set forth herein are intended to run with the land and shall bind Owner and all successors, heirs, grantees, and assigns. These terms and conditions shall be made part of each deed subsequently recorded and shall bind each successor in interest for a period of thirty years from the date of recordation.
10. This project was/was not a pipeline project and received approvals within the timeframe as provided for during the revision of Chapter 19.66, therefore the total number of BMR units were calculated at 10%/12.5%.



Site Map – Attachment “A”

(Attach Copy)



‘ATTACHMENT “B”

RECORDING REQUESTED BY

CITY OF SUNNYVALE

Record at No Fee per Government
Code Section 6103

AND WHEN RECORDED MAIL TO

Housing Division
Phone: 408-730-7250

CITY OF SUNNYVALE

456 W. Olive Avenue
P.O. Box 3707
SUNNYVALE, CA 94088-3707

_____SPACE ABOVE THIS LINE FOR RECORDER’S USE_____

APN#: _____

DEED OF TRUST

Securing Deed Restrictions that control the resale of the Below Market Rate Property, including **obligations and restrictions limiting the use and occupancy, the resale value of the property and the ability to transfer title to the property.**

THIS DEED OF TRUST is made as of _____, **20** between _____, _____, ("Trustor"), and the **CITY OF SUNNYVALE, a Municipal Corporation of the State of California** ("Trustee" and Beneficiary"), whose address is: **456 West Olive Avenue, P.O. Box 3707, Sunnyvale, California, 94088-3707.**

This Deed of Trust is security to insure compliance with the provisions of the Sunnyvale Below Market Rate Ordinance Chapter 19.66 and is secured on _____, **SUNNYVALE, CALIFORNIA** a below market rate property and is entered into as of this ____ day of _____, 20 , by and between the **CITY OF SUNNYVALE** ("City") and _____, ("Owner"). The covenants run with the land and the terms and conditions of the Deed of Trust are intended to bind the Owner for thirty (30) years from the date of the recordation of the Deed of Trust.



RECITALS

WHEREAS, the City has developed a program to provide housing opportunities to persons with low or moderate incomes to purchase homes at prices which are below market rates prevailing in the community; and

WHEREAS, the intent of the City is to preserve the number and availability of affordable homes in the program for persons with low or moderate incomes for as long as possible;

Whereas, the parties understand and agree that owner will take out a purchase money loan secured by a First Deed of Trust on the property. This purchase money loan may not exceed **97%** of the Below Market Rate value of the property. In order to protect the City of Sunnyvale interest in the property, further encumbrancing of the property, after the purchase money loan, including refinancing of the First Deed of Trust, second or subsequent loans and/or any other encumbrances or liens against the property shall be limited such that the total encumbrances of the property does not exceed 95% of the Below Market Rate value of the property. Violation of this provision shall be considered a prohibited transfer and will constitute a breach of the Deed of Trust. The Below Market Rate value is \$ _____, and may be adjusted by the City of Sunnyvale, from time to time, as described in the Purchase Price formula adjustment contained in Section 15(B).__

NOW, THEREFORE, in consideration of the benefits received by the Owner, Owner and City agree as follows:

1. Premises. The real property which is the subject of this Deed of Trust is commonly known as (street address), SUNNYVALE, CALIFORNIA more fully described in the legal description attached hereto and incorporated herein by reference as Exhibit "A." Said real property ("Premises") is hereby designated as a Below-Market Rate Unit ("BMR unit") and shall be subject to the terms and conditions herein set forth, as well as the applicable provisions of Sunnyvale Municipal Code Chapter 19.66, and administrative procedures together with any amendments, which may be adopted from time to time.

2. Supersession. This Deed of Trust shall supersede any and all resale Deed of Trusts, deed restrictions and other similar conditions and/or restrictions previously imposed on the Premises pursuant to the provisions of Chapter 19.66 of the Sunnyvale Municipal Code, whether or not such previous Deed of Trusts or restrictions were recorded.



3. Owner Representations and Warranties. The Owner represents and warrants to the City that the financial and other information previously provided to the City by the Owner for the purpose of qualifying to purchase the BMR unit was true and correct at the time it was given and remains true and correct as of the date of the Deed of Trust. Owner shall be in default if Owner, during the loan application process, gave materially false or inaccurate information or statements to City (or failed to provide City with any material information) including, but not limited to, representations concerning (i) Owner's occupancy of the Property as a principal residence and (ii) Owner's income. Owner further understands that any material misstatement or misrepresentation shall be deemed to be a material breach of this Deed of Trust.

4. Occupancy of Property: Owner shall occupy, establish and maintain the use of the Property as Owner's principal residence within thirty (30) days after the execution of this Deed of Trust. Owner's principal residence shall mean the Property is occupied by the Owner for at least ten (10) months out of each year. The Owner shall not lease the Property without the express written consent of the City of Sunnyvale during any twelve-month period and shall not lease the property without providing the City with a copy of the lease. Owner shall continuously claim a homeowner's exemption for property taxes with the Santa Clara County Assessor's Office on the Property. Failure to claim the homeowner's exemption is a breach of the terms and conditions of the Deed of Trust.

5. Transfer by Owner. Any attempt by the Owner to make a Prohibited Transfer to or any interest in the Property in violation of the terms of the Deed of Trust shall be void and subject to exercise by the City of its right of first refusal to purchase.

(A) "Transfer" means any voluntary or involuntary sale, assignment or transfer of or any interest in the Property, including fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entirety, life estate, or other limited estate, leasehold interest or any rental of the Property, or any interest evidenced by a land contract, or any encumbrance or liens exceeding 95% of the Below Market Rate value of the property. Any Transfer without satisfaction of the conditions of this Deed of Trust shall be deemed a "Prohibited Transfer".

(B) The following Transfers are not considered Prohibited Transfers and therefore are not subject to the City's right to exercise its right of first refusal to purchase: (a) Transfer by devise, or inheritance to the Owner's spouse; (b) Transfer of title by an Owner's death to a surviving joint tenant, tenant by entirety, or a surviving spouse of community property; (c)



Transfer of title to a spouse as part of divorce or dissolution proceedings; (d) Transfer of title or an interest in the Property to the spouse in conjunction with marriage; providing, however; that these covenants shall continue to run with the title to the Property following said Transfers; and that an instrument be executed, acknowledge and recorded by the Transferee containing the following covenant: "This Property is subject to the Deed of Trust securing deed restrictions that restrict the resale, refinance, occupancy and contain City's right of first refusal to purchase and Transfer on behalf of Transferee, and Transferee's successors and assigns, covenants and agrees to be bound by and perform according to the terms and conditions of the Deed of Trust, and to include in any further Transfer of the Property the covenant required by Section 5(B) of the Deed of Trust." A Transferee who satisfies the conditions of this Section 5(b) shall then be the Owner.

(C) Transfers by devise or inheritance will be permitted under the following terms and conditions of transfer: (a) Transferee will reside in the Property and within thirty (30) days of the transfer the Transferee shall occupy, establish and maintain the use of the Property as Transferee's principal residence; (b) The Transferee shall provide all information related to household income necessary for the purpose of determining the financial qualifications of the transferee to own a BMR unit; and (c) The Transferee will execute a Deed of Trust securing the covenants and conditions of the City of Sunnyvale Below Market Rate Program including any and all conditions contained in Sunnyvale Municipal Code Chapter 19.66, including any amendments thereto which may be adopted from time to time and this instrument will include a full renewal of the term of the restrictions of the Below Market Rate Program as provided for in Sunnyvale Municipal Code Chapter 19.66, as related to the purchase of units.

6. Notice of Prohibited Transfer Within thirty (30) days after receiving notification of a Prohibited Transfer, the City of Sunnyvale shall give written notice to the Owner, specifying the nature of the Prohibited Transfer. If the violation is not corrected to the satisfaction of the City within ten (10) days after the date of the notice or within such further time as the City determines is necessary to correct the violation, the City may declare a default under the terms of this Deed of Trust. Upon the declaration of a default, the City may exercise it's right of first refusal to purchase, may apply to a court of competent jurisdiction for specific performance under the terms of the Deed of Trust, for an injunction prohibiting a proposed sale or transfer in violation of the terms of the Deed of Trust, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate.



7. Fannie Mae. Any attempt to transfer title or any interest therein in violation of these covenants shall be void, provided, however, that any deed restrictions herein shall be subordinate to any mortgage held by the Federal National Mortgage Association (FNMA—"Fannie Mae") pursuant to the Community Partnership Program as described in Part V, section 224 of the Fannie Mae Selling Guide. In the event of a foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral Deed of Trust restricting the use of the Premises to low or moderate income households or otherwise restricting the Owner's ability to sell the Premises shall have no further force or effect on subsequent owners or purchasers of the Premises. Any person, including his or her successors or assigns (other than the Owner or a related entity of the Owner), receiving title to the Premises through a foreclosure of the First Deed of Trust shall receive title to the Premises free and clear from such restrictions. Provided that (i) the City has been given written notice of a default under the First Deed of Trust and (ii) the City shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as determined by the Senior Lien Holder, within the 60-day period provided in such notice sent to the City.

8. Attorneys' Fees. Owner hereby agrees to reimburse City the full cost and expense, including staff time and attorneys' fees and costs, incurred by City in an effort to correct any default or enforce any violation of the terms of this Deed of Trust, and Owner further understands and agrees that if such funds are not reimbursed, City may deduct same from the proceeds upon resale of the Premises.

9. Covenant Running with the Land. The terms and conditions set forth herein are intended to run with the land and shall bind Owner and all successors, heirs and grantees. These terms and conditions shall be made part of each deed subsequently recorded and shall bind each successor in interest until the earlier of (a) **thirty (30) years** from the date of recordation; or (b) the recordation of a subsequent and superseding Deed of Trust covenant.

10. Right of First Refusal. Except as provided herein, Owner hereby grants and gives to the City of Sunnyvale or its designee a right to purchase the Premises under conditions set forth below. City, at its sole discretion, may assign this right to an individual buyer who meets the City's eligibility qualifications to participate in the program. City reserves the right to reassign the right to another eligible, qualified buyer in the event the initial designee fails or is unable to complete the transaction. Any assignment or reassignment of this right shall extend the time limits for performance under this Deed of Trust.



11. Resale Procedures.

A. Notice of Offer to Sell. Whenever the Owner no longer desires to own the Premises, Owner shall notify City of their intent to offer the property for sale in accordance with the terms of this Deed of Trust. Such notice shall be in writing, and may be personally delivered or sent by first class mail through the United States Postal Service, addressed to the Director of Community Development, **City of Sunnyvale, P.O. Box 3707, Sunnyvale, California 94088-3707.** Owner's offer to sell may be withdrawn by Owner, provided that notice of withdrawal has been received by City or its Designee, in writing, prior to acceptance by City or its Designee.

B. Acceptance. City, its designee or assignee shall accept offer within one hundred eighty (180) days from the date of receipt of Owner's notice of offer to sell the Premises. This acceptance shall be in writing, and personally delivered or sent by first class mail through the United States Postal Service, addressed to the Owner of record at the official address of the Premises. For purposes of fulfillment of the terms of this procedure, the notice of intent to sell the premises shall be deemed to be an offer to sell, and the exercise of the right to purchase by the City or its designee or assignee shall be deemed to be an acceptance of that offer. Acceptance by City or its Designee shall constitute a legally binding contract for the transfer of title, and once accepted, the offer to sell may not be withdrawn without the express, written consent of the party who accepted the offer.

C. Escrow. Within ninety (90) days of the date of acceptance, the City or its designee shall open an escrow account. City reserves the right, at any time during this process, to subsequently assign its right to purchase to an individual who is eligible and qualified to participate in the program. Once opened, an escrow must be closed within ninety (90) days, unless both parties mutually agree, in writing, to an extension of time. In no case shall the time between receipt of an offer to sell and the date of close of escrow exceed three hundred and sixty (360) days, unless both parties mutually agree, in writing, to extend that date, or if for any reason the time periods herein are tolled pursuant to the administrative procedures.

D. Acceleration of Time Period for Hardship. Owner may request the City to accelerate the time period specified in subsection B. for a party to accept the offer to sell, or for the City to exercise its right of first refusal, to not exceed ninety (90) days from the receipt of the offer to sell. The



Owner would be entitled to accelerate the time period if, in the determination of the Director of Community Development, the Owner can establish that failure to accept the offer to sell, or for the City to otherwise fail to exercise its right of first refusal within ninety (90) days would result in a hardship to the Owner. For purposes of this Deed of Trust, the Owner shall establish that a hardship would result by submission of competent evidence, of a significant loss of funds, loss of an opportunity to qualify or otherwise purchase a new home, or due to an unexpected and sudden loss of employment, job transfer, or death of a spouse or immediate family member. The determination of the existence of a hardship shall be at the sole discretion of the Director of Community Development. Examples of possible grounds for establishing a hardship shall include, but not be limited to, an extraordinary and significant loss of funds, loss of an opportunity to qualify or otherwise purchase a new home, or an unexpected and sudden loss of employment, job transfer, or death of a spouse or immediate family member. Any request for acceleration due to hardship shall be requested by the Owner, in writing, not later than thirty (30) days from the date of receipt of the notification of intent to sell. The Director shall make a determination and notify the owner within ten (10) business days of receipt of the request for a hardship acceleration that the request has been approved, denied, or that additional information is required to make the determination. In the event the request is denied, or if additional information is required, the Owner may submit further evidence and request a reconsideration. In any case, the City shall have a minimum of sixty (60) days from the date of receipt of the new evidence or of the request for reconsideration of a previously issued denial to accept the offer to sell.

12. Termination of Conditions. If the City or its designee does not accept an offer of sale within one hundred eighty (180) days of the date of receipt of Owner's notice, or an escrow account is not opened within ninety (90) days of the date the offer has been accepted, all restrictions, resale controls, and other terms of this Deed of Trust shall cease and become null and void and of no further effect as to the Premises, unless the time period has been tolled, or extended by mutual, written Deed of Trust of the parties.

13. Owner's Obligation to Cooperate. At all times, Owner shall ensure that the Premises are clean and in good repair, and available to be shown to prospective buyers. Owner shall cooperate with the City of Sunnyvale and its respective officers, employees and representatives. Failure to comply with these conditions shall be deemed a material breach of Owner's obligations pursuant to the terms of this Deed of Trust, and upon determination by the City that Owner has failed to comply with any of the above conditions, City shall notify Owner that the time periods stated herein shall be tolled, and the applicable time periods extended accordingly, until Owner has



complied with all of the conditions of this Deed of Trust. Acts by Owner which shall be deemed to be a breach of this obligation include, but are not limited to, failure to make the unit available for showing to prospective buyers upon reasonable notice, willful or deliberate actions to dissuade prospective buyers from purchasing the unit, and failure or refusal to return telephone calls, complete forms, provide required reports, or perform other actions ordinarily required by a party to a real estate transaction in a timely manner. In addition to tolling the applicable time periods, the City may pursue any other remedies for breach based upon this paragraph, or as pursuant to the administrative procedures.

14. Closing Costs. Closing costs, home inspections and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of such escrow. All work recommended in said report to repair damage caused by infestation or infection of wood-destroying pests or organisms found and all work to correct conditions that caused such infestation or infection shall be done at the expense of the Seller. Any work to correct conditions usually deemed likely to lead to infestation or infection of wood-destroying pests or organisms, but where no evidence of infestation or infection is found with respect to such conditions, is not the responsibility of the Seller, and such work shall be done only if requested by the Buyer and then at the expense of the Buyer. The purchase price shall be paid in cash at the close of escrow or as may be otherwise provided by mutual agreement of Buyer and Seller.

15. Purchase Price. The purchase price of the Premises shall be fixed at the lower amount as determined by using the following two methods:

A. Fair Market Value. City or its designee shall have an appraisal made by an appraiser of its choice to establish the fair market value. The Owner, at his or her own expense, may also have an appraisal made by a qualified appraiser of Owner's choice to establish the market value. If Owner elects to obtain their own appraisal, the time period during which the City has the option to perform pursuant to this Deed of Trust shall be tolled for the period of time between the time the City obtains an appraisal and Owner submits a separate appraisal. If an Deed of Trust cannot be reached as to the fair market value, the average of the two appraisals shall be deemed the market price, unless the difference between the two appraisals is greater than ten (10) percent of the amount of the higher appraisal, in which case City has the option of requesting a third appraisal be conducted by a qualified appraiser agreed upon by both City and Owner, who will make an independent appraisal without knowledge of the results of the



first two appraisals. The amount of the first two appraisals which is closer to the amount determined by the third appraiser shall be deemed the fair market value for purposes of this Deed of Trust.

B. Adjusted by Consumer Price Index. Base Price:
Dollars (), plus an amount, if any, to compensate for any increase in the cost of living as measured by the housing component of the Bay Area or closest metropolitan area Consumer Price Index ("Index") for all Urban consumers (CPI-V) as published periodically by the United States Department of Housing and Urban Development. For that purpose, the Index prevailing on the date of the purchase by the selling Owner of said Premises shall be compared with the latest Index available on the date of receipt by City of notice of intent to sell. The percentage increase in the Index, if any, shall be computed and the base price shall be increased by one-third ($1/3$) of that percentage; provided, however, that the price shall in no event be lower than the purchase price paid by the selling Owner when that Owner purchased the Premises. The purchase price shall be adjusted to include the amount of any substantial capital improvement expenditures greater than one percent of the original purchase price, costs for the services of a real estate professional to administer the transaction, minus any costs necessary to bring said unit into conformity with all applicable provisions of the Sunnyvale Municipal Code.

16. Improvements. The adjusted price described in Paragraph 15.B above shall be increased by the value of any substantial structural or permanent fixed improvements which cannot be removed without substantial damage to the Premises or substantial or total loss of value of said improvements, and by the value of any appliances, fixtures, or equipment which were originally acquired as part of the Premises by Owner; provided that such price adjustment for replacement appliances, fixtures, or equipment shall be allowed only when the expenditure is necessitated by the non-operative or other deteriorated condition of the original appliance, fixture, or equipment.

A. If at the time of replacement the original appliance, fixture, or equipment had in excess of twenty percent (20%) of its original estimated useful life remaining, Owner shall document to the City's satisfaction the condition of the appliance, fixture, or equipment which necessitated its replacement.

B. No such price adjustment shall be made significantly in excess of the reasonable cost to replace the original appliance, fixture, or equipment with a new appliance, fixture, or equipment of comparable quality as hereinafter provided.



(1) No such adjustment shall be made except for improvements, appliances, fixtures, or equipment made or installed by the selling Owner.

(2) No improvements, appliances, fixture, or equipment shall be deemed substantial unless the actual initial cost thereof to the Owner exceeds one percent (1.0%) of the purchase price paid

by the Owner for the Premises; provided that this minimum limitation shall not apply in either of the following situations:

(a.) Where the expenditure was made pursuant to a mandatory assessment levied by the Homeowners' association for the development in which the Premises is located, whether levied for improvements or maintenance to the Premises, the common area, or related purposes.

(b.) Where the expenditure was made for the replacement of appliances, fixtures, or equipment which were originally acquired as part of the Premises by Owner.

C. No adjustment shall be made for the value of any improvements, appliances, fixtures, or equipment unless the Owner shall present to the City valid written documentation of the cost of said improvements. The value of such improvements by which the sale price shall be adjusted shall be determined as follows:

(1) The value of any improvement, appliance, fixture, or equipment, the original cost of which was less than Five Thousand Dollars (\$5,000), shall be the depreciated value of the improvement, appliance, fixture or equipment calculated in accordance with principles of straight-line depreciation applied to the original cost of the improvement, appliance, fixture or equipment based upon the estimated original useful life of the improvement, appliance, fixture or equipment.

(2) The value of any improvement, appliance, fixture, or equipment, the original cost of which was Five Thousand Dollars (\$5,000) or more, shall be the appraised market value of the improvement, appliance, fixture or equipment when considered as an addition or fixture to the premises (i.e., the amount by which said improvement, appliance, fixture or equipment enhances the market value of the premises) at the time of sale. Said value shall be determined in the same manner as the market value of the premises in method 1 above.



(3) On January 1, 1988 and every two years thereafter, regardless of the date of execution or recordation hereof, the amount of Five Thousand Dollars (\$5,000) referred to in paragraphs 1) and (2) immediately above shall be automatically adjusted for the purpose of those paragraphs in the following manner. On each adjustment date, the Consumer Price Index for the San Francisco - Oakland area published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index") prevailing on January 1, 1986, shall be compared with the Index prevailing on the date of recordation of this deed. The percentage increase in the Index, if any, shall be computed and the sum of Five Thousand Dollars (\$5,000) shall be increased in the same percentage. In no event shall the sum be reduced below Five Thousand Dollars (\$5,000).

(4) No price adjustment will be made except upon presentation to City of written documentation of all expenditures made by Owner for whom an adjustment is requested.

D. Notwithstanding any other provision herein, no adjustment shall be made for the value of any improvements, appliances, fixtures, or equipment unless said improvements were completed with required permits and in accordance with applicable provisions of the municipal code. Moreover, no adjustment shall be made for any improvements, appliance, fixtures, or equipment, which were installed or completed in violation of any applicable provision of the homeowners' association by-laws, CC&Rs, or other similar restrictions or regulations.

17. Deferred Maintenance. Any purchase price determined through the use of this method shall be adjusted by decreasing said price by an amount to compensate for deferred maintenance costs, which amount shall be determined in the following manner. Upon receipt of notice of Owner's intent to sell, City or its designee shall be entitled to inspect the Premises. The owner shall provide the City with a copy of a home inspection report conducted by a licensed home inspection service within 10 days of seller's acceptance of the purchase offer. City or its designee shall have an opportunity to determine whether any violations of applicable building, plumbing, electric, fire, or housing codes exist or any other provisions of Title 16 of the Sunnyvale Municipal Code. Additionally, City or its designee shall determine if there are other items of deferred maintenance beyond normal use requiring repair or replacement. In the event deficiencies are noted, the Owner shall obtain estimates to cure the observed deficiencies. The Owner shall cure the deficiencies in a reasonable manner acceptable to City or designee no later than ten (10) days prior to the close of escrow. Should Owner



fail to cure such deficiencies prior to the scheduled date of close of escrow, at the option of City, or its designee, the escrow holder will be instructed to retain funds necessary to pay for curing such deficiencies (based upon written estimates obtained by City, or its designee), and City shall cause such deficiencies to be cured, and upon certification of completion of work by City, escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to the selling Owner.

18. Assignment of Right to Purchase. In no event shall City become in any way liable to Owner, nor become obligated in any manner, by reason of the assignment of its right to purchase, nor shall City be in any way obligated or liable to Owner for any failure of City's assignee to consummate a purchase of the premises or to comply with the terms of any purchase and sale Deed of Trust. Nothing in this Deed of Trust shall be construed to obligate City to purchase any unit in the event that a buyer participating in the BMR program fails to complete actions to close escrow.

19. City Consent to Lease. Until such time as the City's right to purchase is exercised, waived, or expired, the Premises and any interest in title thereto shall not be sold, leased, rented, assigned, or otherwise transferred to any person or entity except with the express written consent of City or its designee, which consent shall be consistent with the City's goal of creating, preserving, maintaining, and protecting housing in Sunnyvale for persons of low and moderate income.

20. Default and Foreclosure. City shall file for record in the Office of the Recorder of the County of Santa Clara a request for a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering said premises pursuant to Section 2924 (b) of the Civil Code of the State of California. Such request shall specify that any such notice shall be mailed to the **Director of Community Development, City of Sunnyvale, 456 W. Olive Avenue, P.O. Box 3707, Sunnyvale, California 94088-3707.** Any notice of sale given pursuant to Civil Code, Section 2924 (f) shall constitute a notice of intent to sell hereunder and City may exercise its preemptive right prior to any trustee's sale, judicial foreclosure sale, or transfer by deed in lieu of foreclosure. City's right to purchase shall run from the date City obtains actual knowledge of a sale or proposed sale. In the event City elects not to exercise its right to purchase upon default, any surplus to which Owner may be entitled pursuant to Code of Civil Procedure, Section 727, shall be paid as follows:



(A) That portion of surplus (after payment of encumbrances), if any, up to but not exceeding the net amount that Owner would have received after payment of encumbrances under the formula set forth above had City exercised its right to purchase the property on the date of the foreclosure sale, shall be paid to Owner on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to the City to fund the cost to the City for increasing the City's low-income and moderate-income housing stock.

(B) City or its designee shall be entitled to recover all costs incurred in curing such default from Owner. Such costs shall be paid through escrow from the proceeds of sale if the sale is consummated. If the sale is not consummated and Owner retains ownership of the Premises, City, or it's designee, shall be entitled to recover its costs directly from Owner.

(C) In the event City fails to exercise its preemptive rights to purchase or prevent foreclosure or trustee's sale, a completed action of foreclosure or trustee's sale shall render this Deed of Trust and the restrictions imposed thereby to be null and void and of no further force or effect.

21. Acceleration: Remedies Upon Owner's breach of any covenants or agreement of the Owner in this Deed of Trust, including but not limited to, the covenants to pay, when due, any sums secured by the First Deed of Trust or subsequent Deeds of Trust, all taxes, liens, homeowners association dues, assessments or any other obligation secured on the Property, occupancy of the property by the Owner(s) of record as the principal residence, or any prohibited transfer as specified in Section 5 (A), the City, prior to acceleration, will mail by express delivery, return receipt requested notice to Owner specifying; (1) the breach; (2) the action required to cure such breach; (3) a date, not less than (30) days from the date the notice is received Owner as shown on the return receipt, by which such breach is to be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in the City's exercise of it's first right of refusal to purchase the Property. The notice will also inform Owner of Owner's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of the Owner to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the City, at the City's option may: (a) Declare a default under the covenants contained in the Deed of Trust, and exercise it's right of first refusal to purchase the Property and may invoke the power of sale and any other remedies permitted by California law; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take



possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof, and the entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in the Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose the Deed of Trust, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924, et al., as amended from time to time; or (e) exercise all other rights and remedies provided herein, in the instruments by which the Owner acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations and covenants secured hereby, or provided by law.

The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to reasonable attorney's fees.

22. Severability. If any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provisions shall be deemed severable from the remaining provisions contained in this Deed of Trust, and this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

23. Distribution of Insurance and Condemnation Proceeds. In the event that the Premises is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild, or in the event of condemnation, if proceeds thereof are distributed to Owner, or in the event of termination of the condominium, liquidation of the association and distribution of the assets of the association to the members thereof, including Owner, any surplus of proceeds so distributed remaining after payment of encumbrances of said Premises shall be distributed as follows:



That portion of surplus up to but not to exceed the net amount that Owner would have received under the formula set forth above had City exercised its right to purchase the property on the date of the destruction, condemnation valuation date, or liquidation, shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to City.

24. Non-waiver. With the exception of the City's right to exercise a right of first refusal to accept an offer to sell the Premises, the failure of the City to take an action to enforce a right or to seek a remedy under the terms and conditions of this Deed of Trust shall not be deemed to be a waiver by the City to take such action or enforce any rights it may otherwise have pursuant to this Deed of Trust.

25. Compliance with the Sunnyvale Municipal Code. It is the purpose and intent of this Deed of Trust to fulfill and be consistent with the requirements set forth in Chapter 19.66 of the Sunnyvale Municipal Code, which is incorporated by reference herein, as presently written and as amended from time to time hereafter. In the event of a discrepancy or conflict between a particular provision of this Deed of Trust and any provision of Chapter 19.66 of the Sunnyvale Municipal Code, the provisions of the Sunnyvale Municipal Code shall be controlling.

26. Reconveyance. Upon expiration of the terms of the Deed of Trust, the City will request Trustee to reconvey the Security and will surrender the Deed of Trust to the Trustee. Trustee will reconvey the Security without warranty to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

27. Notices. All notices required herein shall be sent to the following address:



CITY:

OWNER:

Housing Officer,
Community Development Department
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

By acceptance of this Deed of Trust, Owner accepts and agrees to be bound by the covenants contained herein.

DATED: _____

Signature of Owner

Print name

Sunnyvale, CA 94086_____

Print address of unit

ACKNOWLEDGEMENT REQUIRED

STATE OF CALIFORNIA)
)ss.

COUNTY OF SANTA CLARA)

On _____, before me, _____, Notary Public, personally appeared
, personally known to me to be the person(s) (or proved to me on the basis of satisfactory
evidence) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

per GC Sec. 40814; CC Sec. 1181

(Notary Seal)



RECORDED DEED OF TRUST – RENTAL

(Under Development)



CURRENT SALE PRICES

Effective as of February 2004:

| Number of Bedrooms in Unit | Sales Price |
|-----------------------------------|--------------------|
| 1 | \$188,074 |
| 2 | \$215,787 |
| 3 | \$243,669 |
| 4 | \$265,805 |



ADDENDUM TO PURCHASE AGREEMENT

For ____[*property address*]_____

Sunnyvale, California

BETWEEN

This Addendum to the Purchase Agreement, dated_____, 200____, is by and
between _____, (“SELLER”)
and_____, (“BUYER”).

I. The BUYER HEREBY AGREES AND ACKNOWLEDGES THAT:

1. Entry will not be allowed into the BMR condominium located at _____, Sunnyvale, California until the close of escrow and recordation of all documents related to the sale. Keys will be provided after recordation of the sale.
2. Personal belongings may not be moved into or stored at the BMR unit until recordation of the sale by the County Recorder’s Office.
3. The BMR condominium cannot be financed for an amount greater than 97% of the BMR value of the unit. The BMR value is always determined by the City of Sunnyvale, Housing Division.
4. The CITY is not responsible for any costs related to this transaction incurred by the BUYER, including, but not limited to, moving expenses, rent, security deposit losses, or any other costs related to occupancy of the BMR unit.



II. Buyer and Seller mutually agree, any other provisions of the Contract to the contrary notwithstanding, that the following provisions are hereby incorporated into the Contract:

1. **Purchase Price.** The purchase price (the “Purchase Price”) of the property is \$_____. The Purchase Price has been established in accordance with the provisions of the City of Sunnyvale Below Market Rate Purchase Program as set forth in Chapter 19.66 of the Sunnyvale Municipal Code, as amended by Ordinance No. 2717-03 on February 4, 2003, and administrative regulations established with respect thereto, as the same may be amended from time to time (such ordinance provisions and regulations are collectively referred to as the “Ordinance”).
2. **Notice of Principal Residence.** Buyer hereby acknowledges and agrees that Buyer will occupy the Property as Buyer’s principal residence in accordance with the provisions of the Ordinance.
3. **Compliance with Below Market Rate Program Ordinance.** It is agreed and understood that the Property is subject to the terms and conditions of the Ordinance, including, with limitation, price controls, occupancy requirements, financing and sales restrictions applicable to the Property. In addition, it is acknowledged and understood by Buyer that the property is subject to the provisions of the Ordinance and administrative regulations, as amended from time to time.
4. **Deed of Trust Provisions.** Buyer acknowledges and agrees that she has read and understood the provisions of Ordinance No. 2717-03 amending Chapter 19.66 of the Sunnyvale Municipal Code pertaining to Affordable Housing and Single Room Occupancies attached as Exhibit A. Buyer acknowledges and agrees that the provisions of the Ordinance will be secured on the property and contained in a Deed of Trust to be conveyed by the Buyer as Trustor and the City of Sunnyvale as Beneficiary.

THE DEED OF TRUST PROVISIONS, AMONG OTHER THINGS, INCLUDE RESTRICTIONS ON FUTURE TRANSFERS, OCCUPANCY AND REFINANCING AND PROVIDE THAT DURING THE CONTROL PERIODS (AS DEFINED THEREIN) THE PROPERTY HEREBY CONVEYED SHALL BE SUBJECT TO ALL THE PROVISIONS OF THE ORDINANCE, AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

THE TOTAL AGGREGATE AMOUNT OF INDEBTEDNESS THAT MAY BE SECURED BY THE PROPERTY HEREBY CONVEYED SHALL NOT EXCEED THE PURCHASE PRICE FOR THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, A RIGHT OF THE CITY OF SUNNYVALE TO ACQUIRE THE PROPERTY HEREBY CONVEYED ON CERTAIN TERMS IN THE EVENT OF A PENDING FORECLOSURE SALE OF THE PROPERTY.



5. **Buyer to Advise Lenders of BMR Program Requirements.** Purchaser shall provide each lender to which Purchaser applies for financing of the purchase of the Property a complete copy of the Contract including this BMR Program Addendum and advise each lender that the BMR Ordinance and administrative regulations include requirements with which any financing documents provided must comply.
6. **No liability of BMR Program (as defined in this paragraph).** The Buyer and Seller expressly acknowledge and agree that the City of Sunnyvale, including all of its' employees, agents, contractors, representatives and counsel shall have no liability to either party and are hereby unconditionally and forever released from any and all liability whatever in connection with the purchase and sale of the Property. Buyer and Seller expressly acknowledge that each of them intends the BMR Program to be the beneficiary of such release.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF SUNNYVALE ("CITY")

By _____
Housing Officer

("BUYERS")

By _____

By _____

("SELLERS")

By _____

By _____